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8  
9 **BEFORE THE**  
**CALIFORNIA BOARD OF OCCUPATIONAL THERAPY**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**  
11

12 In the Matter of the Accusation Against:

Case No. OT2005-179

13 **LYNN MARIE FARNEY**  
30990 Avenida del Reposo  
14 Temecula, CA 92591

**A C C U S A T I O N**

15 **Occupational Therapist License**  
16 **No. OT 2989**

Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Heather Martin (Complainant) brings this Accusation solely in her official capacity as  
21 the Executive Officer of the California Board of Occupational Therapy, Department of Consumer  
22 Affairs.

23 2. On or about December 9, 2003, the California Board of Occupational Therapy issued  
24 Occupational Therapist License Number OT 2989 to Lynn Marie Farney, also known as Lynn  
25 Marie Ferns (hereinafter "Respondent"). The Occupational Therapist License was in full force  
26 and effect at all times relevant to the charges brought herein and will expire on May 31, 2011,  
27 unless renewed.

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## JURISDICTION

3. This Accusation is brought before the California Board of Occupational Therapy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 2570.30 of the Code states:

The board shall retain jurisdiction to proceed with any investigation, action or disciplinary proceeding against a license, or to render a decision suspending or revoking a license, regardless of the expiration, lapse, or suspension of the license by operation of law, by order or decision of the board or a court of law, or by the voluntary surrender of a license by the licensee.

## STATUTORY PROVISIONS

6. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

7. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

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1           8.     Section 2570.185 of the Code states:

2                 An occupational therapist shall document his or her evaluation, goals, treatment  
3                 plan, and summary of treatment in the patient record. Patient records shall be  
4                 maintained for a period of no less than seven years following the discharge of the  
5                 patient, except that the records of unemancipated minors shall be maintained at least  
6                 one year after the minor has reached the age of 18 years, and not in any case less than  
7                 seven years.

8           9.     Section 2570.28 of the Code states:

9                 The board may deny or discipline a licensee for any of the following:

10                (a) Unprofessional conduct, including, but not limited to, the following:

11                   (1) Incompetence or gross negligence in carrying out usual occupational  
12                   therapy functions.

13                   (2) Repeated similar negligent acts in carrying out usual occupational  
14                   therapy functions.

15                   .....  
16                   (c) Violating or attempting to violate, directly or indirectly, or assisting in or  
17                   abetting the violation of, or conspiring to violate, any provision or term of this chapter  
18                   or any regulation adopted pursuant to this chapter.

19                   .....  
20                   (e) Conviction of a crime or of any offense substantially related to the  
21                   qualifications, functions, or duties of a licensee, in which event the record of the  
22                   conviction shall be conclusive evidence thereof.

23           10.    Section 2570.29 of the Code states:

24                 In addition to other acts constituting unprofessional conduct within the meaning  
25                 of this chapter, it is unprofessional conduct for a person licensed under this chapter to  
26                 do any of the following:

27                   .....  
28                   (b) Use to an extent or in a manner dangerous or injurious to himself or herself,  
29                   to any other person, or to the public, or that impairs his or her ability to conduct with  
30                   safety to the public the practice authorized by his or her license, of any of the  
31                   following:

32                   .....  
33                   (3) Alcoholic beverages.

34           ///

1 (c) Be convicted of a criminal offense involving the prescription, consumption,  
2 or self-administration of any of the substances described in subdivisions (a) and (b) of  
3 this section, or the possession of, or falsification of a record pertaining to, the  
4 substances described in subdivision (a) of this section, in which event the record of  
5 the conviction is conclusive evidence thereof.

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## REGULATORY PROVISIONS

11. California Code of Regulations, title 16, section 4170, states, in pertinent part:

A violation of any ethical standard of practice constitutes grounds for disciplinary action. Every person who holds a license, certificate or limited permit issued by the board shall comply with the following ethical standards of practice:

(b) Occupational therapy practitioners shall take reasonable precautions to avoid imposing or inflicting harm upon the client or to his or her property.

(1) Occupational therapy practitioners shall not exploit clients in any manner.

(2) Occupational therapy practitioners shall avoid relationships or activities that interfere with professional judgment and objectivity.

(c) Occupational therapy practitioners shall collaborate with clients, caretakers or other legal guardians in setting goals and priorities throughout the intervention process.

(1) Occupational therapy practitioners shall fully inform the client of the nature, risks, and potential outcomes of any interventions.

(2) Occupational therapy practitioners shall obtain informed consent from clients involved in research activities and indicate in the medical record that they have fully informed the client of potential risks and outcomes.

(3) Occupational therapy practitioners shall respect the client's right to refuse professional services or involvement in research or educational activities.

(4) Occupational therapy practitioners shall maintain patient confidentiality unless otherwise mandated by local, state or federal regulations.

(d) Occupational therapy practitioners shall perform occupational therapy services only when they are qualified by education, training, and experience to do so.

(1) Occupational therapy practitioners shall hold the appropriate credentials for the services they provide.

(2) Occupational therapy practitioners shall refer to or consult with other service providers whenever such a referral or consultation is necessary for the care of the client. Such referral or consultation should be done in collaboration with the client.

1 (e) Occupational therapy practitioners shall comply with the Occupational  
2 Therapy Practice Act, the California Code of Regulations, and all other related local,  
state, and federal laws.

3 (f) Occupational therapy practitioners shall provide accurate information about  
4 occupational therapy services.

5 . . . .

## 6 COST RECOVERY

7 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
8 administrative law judge to direct a licensee found to have committed a violation or violations of  
9 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
10 enforcement of the case.

## 11 FACTS

12 13. Respondent was employed as an occupational therapist for SunPlus Home Health  
13 Care Services (SunPlus) from January 30, 2006 until she was terminated on May 17, 2006. As a  
14 result of a complaint filed with the Board by SunPlus on or about May 17, 2006, the Division of  
15 Investigation (DOI) conducted an investigation of the allegations against Respondent, which  
16 included, but was not limited to, incomplete documentation in patients' records and patient  
17 abandonment.

18 14. The complaint indicated that on May 3, 2006, SunPlus notified Respondent in writing  
19 that unless she contacted her supervisor by May 10, 2006, SunPlus would consider it as  
20 Respondent's voluntary resignation. Respondent was directed to provide outstanding paperwork  
21 and documentation, and to return company property.

22 15. In a letter from Respondent to her SunPlus supervisor dated May 24, 2003 (*sic*),  
23 Respondent requested she be provided with a list of the missing documentation. She indicated  
24 she would mail the company pager and drop site key to SunPlus. Respondent's letter was  
25 provided to the DOI investigator.

26 16. On June 27, 2006, the DOI investigator contacted Respondent by telephone and  
27 scheduled a personal interview at the Ontario Field Office on Thursday, July 6, 2006 at 1330  
28 hours. He also sent Respondent a letter documenting the agreed-upon interview date and time.

17. On July 6, 2006, after Respondent failed to appear for the meeting, the DOI investigator called Respondent who stated that she thought the interview was on July 7th and that she had not bothered to read the investigator's letter confirming the date and time. The interview was rescheduled for July 10, 2006 at 1000 hours.

18. After Respondent arrived late on Monday, July 10, 2006, DOI Investigator conducted an interview. Respondent stated that she was unemployed because the Board failed to renew her license. The investigator explained that although Respondent had paid a \$2,000 citation fine and renewal fees, she was still required to complete the documentation required at Orangegrove Rehabilitation Hospital. (See Factors in Aggravation, paragraph 25, below.) With regards to the missing documentation requested by SunPlus, Respondent stated that she had completed all documentation the previous month (June 2006). The DOI investigator told Respondent that he had been in constant communication with Respondent's former SunPlus supervisor and as of June 30, 2006, there were seven patient charts that still required documentation by Respondent. The investigator gave Respondent ten business days to resolve the issue with the SunPlus patient charts and to return the company's property. On September 29, 2006, the DOI investigator contacted Respondent's former SunPlus supervisor and confirmed that she had finally completed the required documentation.

### FIRST CAUSE FOR DISCIPLINE

(Incompetence or Gross Negligence in Carrying Out Occupational Therapy Functions)

19. Respondent is subject to disciplinary action under section 2570.28, subdivision (a)(1) of the Code for unprofessional conduct in that on or about and between January 30, 2006 and May 17, 2006, Respondent failed to provide accurate information about occupational therapy services rendered in violation of California Code of Regulations, title 16, section 4170, subdivision (f), and failed to consistently and timely document her evaluation, goals, treatment plan, and summary of treatment in patient records in violation of section 2570.185 of the Code. Respondent's incompetent and/or negligent conduct risked potential harm to the patient, and placed an undue legal and financial burden on Respondent's employer. Such conduct reflects a significant lapse in the standard of care expected of a competent occupational therapist.

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Repeated Similar Negligent Acts)**

3 20. Respondent is subject to disciplinary action under section 2570.28, subdivision (a)(2)  
4 of the Code for unprofessional conduct in that on or about May 17, 2006, in a prior disciplinary  
5 proceeding, the Board issued Citation No. OT-2005-83, citing Respondent under section 2570.28,  
6 subdivision (a)(1) of the Code, "Incompetence or gross negligence in carrying out usual  
7 occupational therapy functions." Respondent was fined \$2,000. (See Factors in Aggravation,  
8 paragraph 25, below.)

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(June 3, 2009 Criminal Conviction for Driving Under the Influence on March 8, 2009)**

11 21. Respondent is subject to disciplinary action under sections 490 and 2570.28,  
12 subdivision (e) of the Code in that Respondent was convicted of a crime substantially related to  
13 the qualifications, functions, or duties of an occupational therapist. The circumstances are as  
14 follows:

15 a. On or about June 3, 2009, in a criminal proceeding entitled *People of the State*  
16 *of California v. Lynn M. Farney*, in San Diego County Superior Court, case number M076356,  
17 Respondent was convicted on her plea of guilty of violating Vehicle Code section 23152,  
18 subdivision (a), driving under the influence of alcohol, a misdemeanor.

19 b. As a result of the conviction, on or about June 3, 2009, Respondent was  
20 sentenced to five years summary probation, perform five days Public Work Service (with credit  
21 for two days), standard alcohol conditions, completion of a First Conviction Program and a  
22 MADD Impact Panel, and payment of fees and fines in the amount of \$1,942.

23 c. The facts that led to the conviction were that on or about the evening of March  
24 8, 2009, an off-duty San Diego County Sheriff's Deputy contacted the California Highway Patrol  
25 (CHP) regarding her observations of a driver (Respondent) operating a vehicle in an impaired  
26 manner. The CHP officer intercepted Respondent after she parked her vehicle in a private  
27 driveway at a Poway residence. Respondent, the sole occupant, was exiting her vehicle as the  
28 CHP officer approached. The officer noted that Respondent's upper body had a pronounced sway

1 as she turned to look at him. When she returned to her vehicle to retrieve her driver's license, she  
2 staggered and nearly fell over. Respondent denied several times having consumed any alcoholic  
3 beverages that evening. The officer noted that Respondent's eyes were red and watery and she  
4 constantly swayed back and forth during questioning. Respondent was not able to successfully  
5 complete any of the field sobriety tests as explained and demonstrated by the officer. Respondent  
6 volunteered to perform a preliminary alcohol screening (PAS) test. The first sample indicated a  
7 blood alcohol concentration (BAC) of .244 percent, and the second sample was a .252 percent  
8 BAC. Respondent was arrested and transported to jail where she provided two chemical breath  
9 tests resulting in BAC's of .19 percent.

#### 10 **FIFTH CAUSE FOR DISCIPLINE**

##### 11 **(Unprofessional Conduct – Dangerous Use of Alcohol)**

12 22. Respondent has subjected her license to disciplinary action under section 2570.29,  
13 subdivision (b) of the Code in that on or about March 8, 2009, as described in paragraph 21,  
14 above, Respondent drove a motor vehicle with a BAC three times the legal limit, and was under  
15 the influence of alcohol to an extent or in a manner that was dangerous and injurious to herself  
16 and the public, and is substantially related to the qualifications, functions, and duties of an  
17 occupational therapist.

#### 18 **SIXTH CAUSE FOR DISCIPLINE**

##### 19 **(Unprofessional Conduct – Conviction of an Alcohol-Related Criminal Offense)**

20 23. Respondent has subjected her license to disciplinary action under section 2570.29,  
21 subdivision (c) of the Code in that on or about June 3, 2009, as described in paragraph 21, above,  
22 Respondent was convicted of driving under the influence of alcohol and driving with a BAC in  
23 excess of .24 percent. Such unprofessional conduct is substantially related to the qualifications,  
24 functions, and duties of an occupational therapist.

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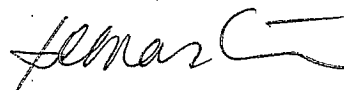
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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the California Board of Occupational Therapy issue a decision:

1. Revoking or suspending Occupational Therapist License Number OT 2989, issued to Lynn Marie Farney;
2. Ordering Lynn Marie Farney to pay the California Board of Occupational Therapy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: November 3, 2009



HEATHER MARTIN  
Executive Officer  
California Board of Occupational Therapy  
Department of Consumer Affairs  
State of California  
Complainant

SD2009702573